

REPORT - PLANNING COMMISSION MEETING
June 24, 2004

Project Name and Number: Hill Area Initiative Implementation – Zoning Text (PLN2004-00029)

Applicant: City of Fremont

Proposal: Amend the zoning ordinance to conform to the General Plan as revised by Measure T, the Hill Area Initiative of 2002 (“Hill Area Initiative”).

Recommended Action: Recommend to City Council

Location: Amendments apply to the Hill Area as defined by the Hill Area Initiative

Assessor Parcel No(s): NA

Area: NA

Owner: NA

Agent of Applicant: None

Consultant(s): None

Environmental Review: An initial study and draft Mitigated Negative Declaration have been prepared and circulated for this project

Existing General Plan: NA

Existing Zoning: NA

Existing Land Use: NA

Public Hearing Notice: Public hearing notification is applicable. A total of 786 notices were mailed to interested parties and to owners and occupants of property within 300 feet of the draft Toe of the Hill line on streets east of Mission Boulevard from the Union City boundary to Niles Canyon Road, then generally east of Canyon Heights Drive to its terminus, then east of streets located south of Cadencia Street to Interstate 680, continuing south to Linmore Drive and east of Guadalupe Terrace, St. Joseph Terrace, and Ohlone College, continuing southward easterly of Linda Vista Road, Hunter Lane, Vista Del Sol, Rutherford Court, Rutherford Place, Grapevine Terrace, Napa Court, Stanford Avenue, Hidden Valley Terrace, Sentinel Drive, Saguare Terrace, Rancho Higuera Court, San Clemente Terrace and Avalon Heights Terrace to west of its intersection with Woodside Terrace, then northwesterly to south of Ocotillo Court, then west to Interstate 680, generally following it southward to Green Valley Road to east of its intersection with Scott Valley Road to the Milpitas city limits. The notices to owners and occupants were mailed on June 12, 2004. A Public Hearing Notice was delivered to The Argus on June 7, 2004 to be published by June 11, 2004.

In addition, a Notice of Preparation of a Draft Mitigated Negative Declaration was delivered to The Argus on June 7, 2004 to be published on June 11, 2004.

Executive Summary: The zoning ordinance amendment primarily affects the Open Space and Public Facilities district regulations and also other zoning ordinance sections, including the Planned District regulations. In general, the amendments modify the minimum new parcel size of lands within the Hill Area to be 20 acres (100 acres minimum for new parcels annexed to City after January 1, 2002), except when clustered to meet performance standards that preserve open space lands and minimize visual and environmental impacts. The Hill Area Initiative defines the Hill Area as bounded by the “Toe of the Hill” [defined below], from the Alameda County-Santa Clara County boundary north to the

Fremont-Union City boundary, east along that boundary to Alameda Creek, east and south along Alameda Creek to Calaveras Creek, south along Calaveras Creek to the Alameda County-Santa Clara County boundary, and west along that boundary to the Toe of the Hill.” The amendments would control future development (and additions to existing development), plus the level of review each type of use is required to receive, by specifying the uses allowed and establishing performance standards for that development. The performance standards of the zoning text amendment would reinforce the restrictions on building on the hill face, ridgeline and hilltops within the Hill Area to protect the view of the hills from public areas and protect the open space and low residential density character of the hills. The amendments are required to be consistent with and implement the Hill Area Initiative passed by the Fremont electorate in November of 2002. The change in the location of the Toe of the Hill is based on the language in the Hill Initiative (see the map in Informational Exhibit 2) plus the necessary application of two principles to be able to create “a continuous line” as dictated by the Hill Area Initiative. *Exhibit A-1* contains the proposed change in the definition.

Changes to the Planned District regulations would require amendments to existing Hill Area Planned Districts (e.g., building additions, fences, etc.) to be approved using the pertinent requirements of the Open Space district regulations. Deletion of the sections dealing with increases in density using steps 1, 2 and 3 of the General Plan are also recommended as a housekeeping item to reflect recent changes to the Housing Element of the General Plan eliminating the General Plan residential step density process. The Development Reserve Overlay District (Article 18.7) is proposed for elimination because the Hill Area Initiative eliminated the General Plan designation of the Development Reserve, which was the basis for creating this zoning district. Other minor amendments to other sections of the ordinance are also included.

It is recommended that the Planning Commission recommend the Mitigated Negative Declaration and Exhibits A-1 through A-17 to the City Council.

Background and Previous Actions: On November 5, 2002, the voters of Fremont passed the Hill Area Initiative (Measure T) modifying the City’s hill area policies contained in the General Plan. The text changes specifically made by Measure T have been incorporated into the General Plan by staff. Because the changes to the General Plan were adopted by the vote of the people, no further change to the text of the General Plan is required by the Planning Commission or City Council. However, a General Plan land use map amendment is proposed as a more accurate representation of the Toe of the Hill than the informational illustration contained in the Hill Area Initiative. The proposed General Plan map amendment is the subject of a separate report (Item 8) and is not a part of this action. The General Plan map amendment and the rezoning of those properties affected by the General Plan change from residential districts to the Open Space district and removing the Development Reserve Overlay District (R) will require separate action by the Planning Commission and City Council. *Exhibit A-13* shows the deletion of the Development Reserve Overlay District (R) district from the zoning ordinance.

The following sections describe the changes made to the Zoning Ordinance to make it consistent with the General Plan changes resulting from the passage of Measure T.

Open Space District Land Use Text Changes: The General Plan for the Hill Area has four different land use designations: Hill Face Open Space, Hill Open Space, Private Open Space and Institutional Open Space. Property within the Hill Area is currently zoned Open Space, Planned District, Public Facility or Residential with specific regulations related to each property depending on its general plan and zoning designation. The zoning text amendment entails major changes to the Open Space district and planned districts within the Hill Area to bring the zoning designations into conformity with the voter-approved General Plan amendment (Appendix 2 of the Hill Area Initiative). The following paragraphs describe the major provisions of the initiative and the proposed changes to the zoning ordinance that relate to those provisions.

The Initiative’s Allowable Uses: The Hill Area Initiative lists the allowable uses in the Hill Area:

- “(a) One single family residence on each legal parcel, secondary units to the extent required by State law, and dwelling units for persons employed on the parcel, or on a ranch or farm that includes the parcel.
- (b) Rental of rooms, including with board, not exceeding two units in a residence.

- (c) Agriculture including grazing, horticulture, floraculture and arboriculture, but not including (1) commercial feedlots, except for livestock that primarily receive their sustenance in the Hill Area from grazing on a ranch or farm that includes the parcel, (2) large or medium-size pig farms, poultry ranches, or commercial vineyards, or (3) Christmas tree farms.
- (d) Small-scale, low-intensity rearing, custodianship, training or care of animals, other than ruminants which shall be governed as agriculture by subsection (c), that does not cause material environmental harm.
- (e) Commercial uses, limited to the following:
 1. Outdoor recreation and pastimes predominantly for active participants (this category of permitted uses does not include, among other things, amusement or theme parks and motor vehicle tracks, courses or recreational activities);
 2. Nature observation, study or enjoyment;
 3. Accommodations for short term occupancy and for provision of food and drink (including low-intensity campgrounds and picnic facilities), predominantly for persons engaged in outdoor recreation or nature observation, study or enjoyment;
 4. Uses in historic structures, incidental to preserving the structures and their historic qualities and setting;
 5. Home occupations and offices, subordinate to residential use and conducted primarily by occupants of the property, that will have no deleterious effects on the environment or visual qualities or materially increase local traffic;
 6. Neighborhood stores and services, predominantly to serve the unmet agricultural and other needs of the population of the Hill Area, that cannot practicably be met outside the Area;
 7. Healthcare;
 8. Cemeteries;
 9. Packaging, processing, storage or sale of agricultural produce or plants, a substantial portion of which were grown in the Hill Area;
 10. Small-scale extraction and processing of rock, soil, or water;
 11. Special, occasional short-term events related to agriculture or animals, that do not interfere substantially with the use of land for agriculture or cause lasting adverse environmental harm or visual effects, provided access for vehicles and emergency equipment and for parking meet generally applicable City standards.
 12. Institutional and other non-profit uses that primarily serve Hill Area residents, or whenever and to the same extent like commercial uses would be permitted.
 13. City and other government facilities and infrastructure, and public utility facilities, that are limited to meeting the needs created by uses permitted in the Hill Area unless the City Council reasonably finds more extensive public need, that cannot practicably be met outside the Hill Area. However, this exception for more extensive public need shall not apply to waste treatment and disposal or commercial electrical power generating facilities. Publicly provided outdoor recreation and nature observation and enjoyment and ancillary accommodations are permitted whenever like commercial uses would be allowed."

For the Open Space zoning district, staff has distributed the initiative's allowed uses into four categories: *permitted* uses, uses *accessory* to the permitted uses; those requiring *zoning administrator approval* (staff-level review) and those requiring *Planning Commission approval* of a conditional use permit. The categorization of the initiative's allowed uses is consistent with how land uses listed in the General Plan (e.g., residential, commercial and industrial) are categorized in the zoning ordinance. The zoning land use categorization is based on the Hill Area Initiative's provision that allows the City Council to make further prohibitions, restrictions, conditions in addition to technical changes that are consistent with the intent of the Initiative (Section 22 of the Initiative). A table summarizing the uses is included as an Informational Exhibit attached to this report.

Land Use: Land uses allowed in the Open Space district vary depending on a property's General Plan open space designation (i.e., Hill Face, Hill Open Space, Private Open Space Ridgeline Open Space or Institutional Open Space). The following sections describe the uses allowed for each of the open space categories, as well as the proposed level of review for each type of use.

Zoning Ordinance Revisions:

Toe of the Hill definition (Exhibit A-1): The Hill Area Initiative of 2002 (Measure T) identifies the Toe of the Hill (TOH) as the western boundary of the Hill Area. The Initiative included a TOH definition which differed from the Measure A and Zoning Ordinance definitions. The TOH definition in Measure T is as follows:

"Toe of the Hill" means a line along the base of the hills, where the natural grade first becomes twenty-percent (20%) or more, on the western side of the Hill Area from the Fremont-Union City boundary to the Alameda-Santa Clara County boundary, and on both sides of Niles Canyon and Route 680 east of Mission Boulevard to the Fremont city limits.

To implement Measure T, staff commissioned a topographic slope analysis and used this analysis to draw a TOH line, which conforms to the provisions of Measure T. The new TOH line is contained within a separate report, Hill Area General Plan and Zoning Changes (PLN2004-0030). Because Measure T changed the TOH definition, the zoning text definition (FMC Section 8-2199.8) requires revision. The proposed changes to the zoning text definition are attached as Exhibit A-1. The new definition reflects the principles and criteria staff used to delineate the new TOH line. The proposed new TOH zoning text definition is as follows:

Sec. 8-2199.8. Toe of the Hill.

"Toe of the Hill" shall mean a line along the base of the hills along which the natural grade first becomes twenty percent or more, on the western side of the Hill Area from the Fremont-Union City municipal boundary to the Alameda County-Santa Clara County boundary, and on both sides of Niles Canyon and Interstate 680 east of Mission Boulevard to the Fremont City limits. The criteria used to define the Toe of the Hill shall be as follows:

- (1) The Toe of the Hill shall be a continuous line. The slope shall be measured perpendicular to elevation contours as established from a survey of the natural topography.
- (2) Where the first twenty percent line at the base of the hills is discontinuous, the Toe of the Hill shall be drawn along the boundary of the twenty percent slope area to create a continuous line.
- (3) Where the twenty percent line creates pockets or projections narrower than one hundred feet, the line is drawn across the pocket or projection.
- (4) Application to the Planning Director may be made to revise the location of the Toe of the Hill line on any property and such application will be reviewed for consistency with the Hill Area Initiative of 2002 and any implementing ordinances or regulations adopted pursuant thereto. The applicant shall be required to submit a survey prepared by a professional land surveyor or professional civil engineer showing the existing and proposed Toe of the Hill line, and such survey shall be subject to review by the City. A General Plan Amendment and Zoning atlas amendment shall be required to implement any changes to the Toe of the Hill line.

Hill Face Open Space Land Uses (Exhibit A-3): Because the hill face is regarded as particularly sensitive land because of its visibility and steep slopes, *proposed permitted uses would include* agricultural and park-related activities [items (e) 1, 2, and 3 above] on lands designated as Hill Face Open Space. *Proposed accessory uses would include* packaging, processing, storage or sale of agricultural produce or plants, signs complying with the Sign Ordinance and rooming and boarding of not more than two persons. *Zoning administrator permit uses include* home occupations and occasional short-term events (such as livestock exhibits). *Uses requiring Planning Commission approval as conditional uses include* single-family dwellings and employee housing along with certain outdoor recreational uses (e.g., those *not* predominately for active participants), uses in historic structures, neighborhood stores, healthcare, city and other governmental facilities and public utilities serving the Hill Area and other accessory uses and buildings customarily appurtenant to a permitted use. The Initiative excludes medium and large pig farms but by implication, allows small pig farms. What size constitutes a small pig farm is discussed in the "Animal Feed Yards" section below.

Ridgeline Open Space (Exhibit A-4): The section is recommended for deletion because the ridgeline issues are covered by changes to the Hill Face, Hill Area and Performance Standards sections of the Open Space district.

Hill Open Space Land Uses (Exhibit A-5): *Proposed permitted and accessory uses are identical to those of the Hill Face Open Space district. Uses requiring zoning administrator approval are also the same with the addition of kennels, commercial stables and riding academies to those allowed in the Hill Face. In addition to the conditional uses in the Hill Face, commercial, public or quasi public accommodations for short-term occupancy, neighborhood stores and services stores to meet the unmet needs of the Hill Area, health services, cemeteries and institutional and other non-profit uses that primarily serve Hill Area residents are additional uses possible for property with the Hill Area Open Space designation. Neighborhood stores and services and public facilities and utilities primarily serving the Hill Area are the only conditional uses allowed unless the City Council finds that more extensive public need cannot practicably be met outside the Hill Area. This exception for public need does not include waste treatment and disposal or commercial electrical power generating facilities. It should be noted that water storage, treatment and distribution facilities and high voltage electrical transmission facilities are exempt from local regulation--see the Service Facilities section of this report for a discussion on electrical transmission lines.*

Private Open Space (Exhibit A-6): Because the private open space district also exists outside the Hill Area, the proposed amendment differentiates between lands located inside and outside the Hill Area. The amendment would require uses to be consistent with the General Plan policies for the Hill Area if the proposed use is located in the Hill Area as defined by the Initiative.

Institutional Open Space (Exhibit A-7): The amendment makes a distinction between properties in or out of the Hill Area. *As permitted uses*, properties within the Hill Area would be limited to agriculture, parks, and wildlife refuges consistent with the Hill Area Initiative. *Conditional uses would include* public and quasi-public buildings and uses of administrative, recreational, educational, religious, cultural or public service type related to open space use and outdoor recreational uses and consistent with the Hill Area Initiative.

Lot (yard) Size Requirements (Exhibit A-8): The Hill Area Initiative establishes a twenty-acre minimum lot size for new parcels on Hill Area land within the City and one hundred acres as the new minimum parcel size for land annexed to the City after January 1, 2002. Clustered development may create lots less than the minimum (not exceeding two acres) to meet visibility standards described elsewhere in this report. Exhibit A-8 amends section 8-21715 of the Open Space district regulations to comply with these lot area requirements.

Land Constraints (Exhibit A-9): The provision to allow minor encroachments on constrained land has been amended to only apply to constrained lands outside the Hill Area as defined by the revised General Plan. Because of the specific restrictions in the Hill Area set forth in the Initiative, such minor encroachments will not be allowed.

Non-conforming Lots (Exhibit A-10): This section pertains to the ability to build on lots less than the minimum size for new lots established in the Open Space district. The amendment modifies the existing provision allowing the Planning Commission to approve a conditional use permit for a single dwelling unit on a lot as small as 4,000 square feet to apply to lots existing prior to January 1, 2002, reflective of the Hill Area Initiative provision, rather than the Measure A date in the current section of March 1, 1981. Additionally, the Planning Commission must make findings that the proposed dwelling is consistent with the General Plan policies for the Hill Area.

Performance Standards- (Exhibit A-11): The Hill Area Initiative provided several development criteria to be applied to development. The criteria have been added to the list of the existing performance standards of the Open Space district. In summary, those new standards:

- Require lot creation, construction and grading to minimize visual impact from public places;
- Restrict development and new intensive agriculture on wetlands if impacts on wetland quality is impacted;
- Bar development except that needed for flood and erosion control, water supply transportation facilities, fences or trails within a riparian corridor (defined as those areas within 200 feet from the center of a permanent or intermittent stream bed);
- Prohibit development of agricultural or a more intense agricultural nature, materially impairing an area designated as a Critical Habitat by the US Fish and Wildlife Service;
- Prohibit buildings and roads on slopes of 30% or more (greenhouses are restricted on lands having a 15 percent slope);

- Restrict structures on ridgelines and hilltops where they would project into the visual plane of a ridgeline as viewed from public places (unless there is no other site on the parcel);
- Restrict creation of new lots that would result in building sites on ridgelines or hilltops, or would cause a building to project into the visual plane of a ridgeline or hilltop as viewed from a public place;
- Confine buildings on a parcel to a development envelope not to exceed two acres (with exceptions for agricultural and security needs);
- Establish a maximum aggregate floor area for structures at 1% of parcel's area or 20,000 square feet, whichever is less and a minimum of 10,000 square feet for new parcels at least 20 acres in size. Greenhouses would be subject to a maximum of 40,000 square feet; larger areas may be authorized for agricultural uses; government facilities may extend beyond the limit with City Council findings.
- Encourage clustering to reduce visibility of structures where feasible;
- Require easements over undeveloped portions of property approved for development;
- Prohibit lot line adjustments inconsistent with the General Plan, unless required by State law;
- Withhold granting of certificates of compliance or conditional certificates of compliance, except as required by State law.

Planned District Changes: Several changes to the planned district regulations are proposed to assure planned district amendments are consistent with the Hill Area Initiative. Also recommended are housekeeping changes that relate to previous actions by the Planning Commission and the City Council to eliminate the residential step densities within the General Plan. Those changes are as follows:

Standards--Exhibits A-12-a, b, c: Several amendments to the Planned District Article are proposed. Those changes:

- require amendments to existing planned districts, including planned districts in existence prior to the enactment of the Hill Initiative, to comply with Hill Area Initiative provisions incorporated into the Open Space district regulations;
- eliminate provisions for increases in residential density above step one of the General Plan, because the residential steps have been previously eliminated by the City Council in previous updates of the Housing Element and Zoning Ordinance;
- require interim agricultural uses to be consistent with the Open Space district uses permitted in the Hill Area;
- allow the Development Organization to approve minor amendments to approved precise plans for additions to dwellings and structures or new accessory structures and site improvements, if the change is consistent with the provisions of the Hill Area Initiative embodied into the Zoning Ordinance;
- allow the Planning Commission to approve minor amendments to existing planned districts regarding new construction and other minor amendments thereto if referred by the Development Organization and it finds the amendment to be consistent with the Hill Area Initiative provisions embodied in the Zoning Ordinance; and
- codify the long-standing Council policy that dwellings in excess of 7,500 square feet (including attached garage area) and accessory structures above 600 square feet be reviewed by the Planning Commission.

Animal Feed Yards (Exhibit A-14): This amendment adds small pig farms to the section requiring livestock and kennel structures and areas to be setback at least 200 feet from property lines. It also adds the requirement that such facilities be in compliance with federal, state and county laws pertaining to the keeping of confined animals.

Pig Farms and Feedlots: In trying to more specifically define pig farm size, staff contacted Mr. Ron Furtado, the Agricultural Instructor at Livermore High School who has dealt extensively with student pig raising projects and with ranchers raising pigs in small scale operations. According to Mr. Furtado, 3-5 brooding sows (who typically have two litters per year ranging from 6 to 12 piglets per litter) are sufficient for student projects or pig raising for personal use. If a rancher wanted to raise pigs, it would likely be for educational or hobby purposes, according to Mr. Furtado.

Staff believes defining a small pig farm as farm with no more than three brood sows and their offspring would be consistent with the intent of the Initiative. Because pig confines can be quite odorous, the recommended text amendment would require that pig confinement areas be located at least 200 feet from any property line, and be operated in compliance with the State minimum standards for confined animals. This setback requirement is identical to setback

requirements for poultry farms, commercial feed yards and dog kennels. Under the proposed amendment, the pig confinement area has to be operated so that odor, dust, noise or water drainage not constitute a nuisance or hazard to adjoining properties.

Services (Exhibit A-15): Section 8-22160 of the Zoning Ordinance provides for service facilities (defined as underground or overhead electrical, gas, petroleum, steam or water transmission systems, communication supply or disposal transmission systems, including poles, wires drains sewers, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants). Under this section such facilities located within the streets are permitted in any district. Those facilities not located not in public streets and electrical transmission lines rated at 50,000-volt capacity (50 kilovolt) within public streets would require a conditional use permit. Apparently the requirement for a use permit for electrical power line was written when it was not clear that the State Public Utilities Commission had jurisdiction over these lines. In 1994, the California Public Utilities Commission (CPUC) ruled that electrical and gas transmission facilities between 50 and 200 kilovolt are regulated by the CPUC, not local jurisdictions thus invalidating the city's ordinance requirement. The zoning ordinance specifically exempts Alameda County Water District water storage, transmission and treatment facilities from the requirement for a use permit pursuant to State law. This section of the ordinance is amended to require a use permit for only those service facilities not exempted by State and Federal law. Before a use permit is approved for such a facility, the Planning Commission will have to find the use to be consistent with the Hill Area Initiative.

Rebuilding in case of catastrophe (Exhibit A-16): Uses in buildings or structures, even those that are non-conforming that are destroyed through an act of nature or force majeure may be reestablished at the same size and building footprint through the provisions of section 8-22303, as amended to include residential dwelling uses in the Hill Area. This meets the intent of the Hill Area Initiative by protecting the Hill Area from new development, while also protecting existing property owners' legal rights to continue existing uses.

Special Uses (Exhibit A-17): Section 8-22515 of the Zoning Ordinance lists special uses that are allowed in all non-residential districts not designated for residential uses on the General Plan. While the General Plan allows residential development in open space areas, the General Plan open space designation (and the Open Space zoning district) are not explicitly classified as residential. The proposed amendment would make clear that the special uses would not apply to the Open Space district.

Building Height: Section 12 of the Hill Initiative states that the building height shall not exceed 35 feet. However, the existing zoning regulations set a maximum height limit of 30 feet for strictly residential structures, which also applies outside the Hill Area as defined by the Initiative. Staff believes the existing height standard provides better protection than the Initiative's 35-foot height limit and recommends the existing height limit for structures be retained. Under the Initiative, the City can establish stricter regulations than those contained in the Initiative, and such stricter height regulation is proposed to preserve aesthetic protections.

Development Policy Action: The Development Policy for the Hill Area was first enacted by City Council Resolution No. 1180 on August 6, 1967 and has been subsequently amended to address the scope of development activity seen or proposed therein. Subsequent amendments of various provisions of the Municipal Code have also occurred to reflect objectives and standards.

The Hill Area Initiative has made further amendments necessary as detailed in the Exhibits, to the extent now that the Hill Area Development Policy is proposed for rescission. The Policy is included as Informational Exhibit 3.

Planning Commission Review: Most of the recommended zoning text changes are directly taken from the Hill Area Initiative. For those items, the Planning Commission has little discretion except to recommend changes that provide stricter regulations intended to implement the goals of the Initiative. Breaking down the Initiative's allowed uses into permitted uses, accessory uses, zoning administrator permits and conditional use permits is consistent with the General Plan and Zoning Ordinance treatment of other land use categories and is an example of establishing stricter standards than those in the Hill Area Initiative.

Compliance with the General Plan: The zoning text amendment is intended to implement the policies of the General Plan as amended by the Hill Area Initiative. Specifically, the zoning text amendments categorize the General Plan's allowable uses for the Hill Area as listed in:

Land Use Policy LU 6.2: Subject to the provisions, restrictions, densities, conditions and requirements imposed by the 2002 initiative, Hill Area generally compatible uses are agriculture, recreation and very low density residential which complies with standards and densities set out in the General Plan text . . . [listed above in “The Initiatives Allowable Uses” section].

Establish minimum lot sizes as required by:

Policy LU 6.3: Areas on the Hill Face and Ridgeline are hereby redesignated “Hill Face Open Space.” Development in this area is limited to one residential dwelling unit per twenty acres (.05 units per acre). Constrained and unconstrained land may be combined within a single ownership in order to comply with the density requirements herein, provided that there is at least one contiguous acre of unconstrained land per dwelling unit. Development on accessible but purely constrained land is limited to one unit per twenty (20) acres (.05 units per acre), provided that a site which meets the other standards herein is available; and
Policy LU 6.4: General Plan designations and densities for the portions of the Hill Area outside the Hill Face and Ridgeline are as follows:

1. Areas currently designated as “Institutional Open Space” or under the control of a public agency shall remain or be designated “Institutional Open Space”.
2. Areas designated “Open Space” or “Open Space—Three Acre Estate” are redesignated “Hill Open Space” or, if appropriate, “Institutional Open Space.”

The zoning text amendment’s performance standards implement the environmental and visual policies of:

Policy LU 6.12: Structures may not be located on ridgelines or hilltops, or where they will project into the visual plane of a ridgeline or hilltop, as viewed from public roads, trails, or other public places, unless there is no other building site on the parcel or on a contiguous parcel in common ownership. . Unless there is no other possible configuration, new parcels may not be created that have no building site other than a ridgeline or hilltop, or that would cause a building to project into the visual plane of a ridgeline or hilltop, as viewed from a public place; and
Policy LU 6.15: The City shall perform architectural review for any development in the Hill Area in order to insure consistency with the policies of the General Plan. In addition, all development on the Ridgeline and Hill Face shall be subject to discretionary review and must be approved by the Planning Commission, or by the City Council on appeal; and
Policy LU 6.16: Consistent with the Hill Area Initiative of 2002, all development shall be designated to minimize disturbances of the natural terrain and vegetation and to minimize visual impact. The following restrictions shall apply to development in the Hill Area:

1. No building site, in whole or in part, may be located on a slope of thirty percent (30%) or more. No building may be located on a site that has access over a slope of thirty percent (30%) or more. No greenhouses, in whole or in part, may be located on a slope of fifteen percent (15%) or more. Cultivated agriculture may not be conducted on a slope of thirty percent (30%) or more.
* * * *
3. New or reconfigured parcels, including those resulting from lot line adjustments, must be created or drawn to minimize visibility of development from public places.
4. To the extent practicable, structures shall be located, including by setbacks from parcel boundaries, on that part of a parcel or on contiguous parcels in common ownership that minimizes visibility from public places, except agricultural structures necessary for agricultural purposes may be located in more visible areas.
5. In all cases, appropriate landscaping, preservation of vegetation, screening, and building materials shall be required by the City to minimize the visual impact of development. Consistent with that end, alteration of topography by grading, excavating, filling or other development activity shall be minimized. Development shall be subordinate to and blend with the natural and open space qualities of the area where located, so as to be as unobtrusive as possible, and not to impair those qualities. To the

maximum extent practicable, lighting must be located, designed and shielded so as to confine direct rays to the parcel where the lighting is located.

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7. All buildings on a parcel shall be placed within a contiguous "development envelope" not to exceed two acres, except for building that must be located outside the envelope for agricultural uses or security needs, or for government or public utility facilities that the City Council reasonable finds require a more extensive area.
 8. The maximum aggregate floor area for all floors (regardless of composition) in buildings on a parcel may not exceed one percent (1%) of the parcel's area, or 20,000 square feet, whichever is less, but for any parcel a minimum of 10,000 square feet shall be permitted. Greenhouses are subject to a maximum aggregate floor area of one percent (1%) or 40,000 square feet, whichever is less. Government facilities are not subject to the aggregate limits to the extent that the City Council finds reasonably that they are necessary to serve important public needs, that they cannot practicably be located outside the Hill Area, and that they must exceed the floor area maximum. The City Council may also authorize a larger area if needed for housing for agricultural workers, or for processing, packaging or storage of agricultural produce or plants, a substantial portion of which were grown in the Hill Area, or for other agricultural purpose.

Policy LU 6.16: Development shall utilize clustering, density transfers and other techniques to maximize open Space, minimize environmental and visual impact and encourage development in the Hill Area outside the Hill Face and especially outside the portion of the Ridgeline visible from any point below the Toe of the Hill, within a one-mile radius of the site. If feasible, clustering shall be required for residential and other permitted development on contiguous parcels in common ownership to the extent that clustering or partial clustering would reduce overall visibility of development from public places. Clustering, which also may be described as transfer of development rights, may be allowed for permitted development on any parcels if the effect is to reduce overall visibility from public places, or, consistent with that, to reduce environmental harm. Required or permitted clustering may be on a single parcel or on separate, adjacent parcels that do not exceed two acres.

Natural Resources Policy NR 1.1.1: Whenever feasible, natural and semi-natural wetlands, including riparian corridors, vernal pools and their wildlife habitat shall be preserved or impacts minimized.

Environmental Analysis: An Initial Study and Draft Mitigated Negative Declaration have been prepared for this project. The environmental analysis did not identify significant adverse impacts to the Hill Area of the General Plan associated with this project. A more detailed description of the potential impacts is provided within the Initial Study for the project, which is included as an enclosure.

A finding is proposed that this project would not have a significant effect on the environment. Accordingly, a Draft Mitigated Negative Declaration has been prepared for consideration by the Planning Commission.

The initial study conducted for the project has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources. Based on this finding, a Certificate of Fee Exemption will be submitted with the Notice of Determination after project approval, as required by Public Resources Code section 21089 (see attachment to draft Negative Declaration). The Certificate of Fee Exemption allows the project to be exempted from the review fee and environmental review by the California Department of Fish and Game.

Response from Agencies and Organizations: None from public agencies. A staff meeting with members of the Hill Area Initiative group and other interested parties was held on August 19, 2003 and March 23, 2004 to discuss the draft Toe of the Hill line and proposed zoning text amendments. Another public meeting was held on February 17, 2004 to discuss options related to locating the Toe of the Hill line at a City Council Work Session. A similar work session that the public attended was presented to the Planning Commission on May 13, 2004. A community-wide informational meeting on the draft Toe of the Hill line was held on June 9, 2004.

Enclosures: Informational Exhibit 1 Initial Study and Draft Mitigated Negative Declaration with accompanying fee exemption
Informational Exhibit 2 The Hill Area Initiative of 2002 (Measure T)
Informational Exhibit 3 Open Space Zoning District Land Uses
Informational Exhibit 4 Hill Area Development Policy

Exhibits: Exhibit A-1 Toe of the Hill definition
Exhibit A-2 Public Facilities
Exhibit A-3 Hill Face Open Space
Exhibit A-4 Ridgeline Open Space
Exhibit A-5 Hill Open Space
Exhibit A-6 Private Open Space
Exhibit A-7 Institutional Open Space
Exhibit A-8 Open Space—Yard Requirements
Exhibit A-9 Open Space—Land Constraints
Exhibit A-10 Open Space—Nonconforming lots
Exhibit A-11 Open Space—Performance Standards
Exhibit A-12-a Planned District Standards
Exhibit A-12-b Planned District Commission & Council action
Exhibit A-12-c Planned District Amendments & New Development
Exhibit A-13 Development Reserve Overlay District
Exhibit A-14 Animal Feed Yards
Exhibit A-15 Service Facilities
Exhibit A-16 Nonconforming uses of structures or buildings
Exhibit A-17 Special Uses

Recommended Actions:

1. Hold public hearing.
2. Recommend the City Council find the initial study has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources.
3. Recommend the City Council approve draft Mitigated Negative Declaration with accompanying certificate of exemption and find it reflects the independent judgement of the City of Fremont.
4. Find PLN2004-00029 is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use and Natural Resources Chapters as enumerated within the staff report.
5. Find the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment PLN2004-00029 because the zoning text needs to comply and implement the changes to the General Plan approved by the electorate via the Hill Area Initiative of 2002 (Measure T).
6. Recommend PLN2004-00029 to the City Council in conformance with Exhibits A –1 through A-17 (Zoning Text Amendments).
7. Recommend that the City Council rescind the Hill Area Development Policy as the provisions are outdated and are now incorporated within the proposed Zoning Text Amendments.

Exhibit A-1

City of Fremont Hill Initiative Zoning Text Amendment Definitions December 30, 2003/ May 10, 2004

[Note to Reviewers: This is the existing zoning text, modified in draft form, subject to further modification based on feedback from TAC and/or Council.]

Sec. 8-2199.8. Toe of the hill.

"Toe of the hill" shall mean a line along the base of the hills along which the natural grade ~~is a first becomes~~ maximum of twenty percent or more, as defined by slope analysis, on the western side of the Hill Area from the Fremont-Union City municipal boundary to the Alameda County-Santa Clara County boundary, and on both sides of including Niles Canyon and Interstate 680 east of Mission Boulevard to the Fremont City limits. The criteria used to define the ~~€~~Toe of the hill shall be as follows:

- (1) The ~~€~~Toe of the hill shall be a continuous line. The slope shall be measured perpendicular to elevation contours as established from a survey of the natural topography. over a distance of two hundred fifty feet following the major fifty-foot contours as set forth on the City of Fremont's 200-scale topographic maps. Where a rise of fifty feet in two hundred fifty feet occurs, the toe of the hill shall be plotted on the lowest fifty-foot contour.
- (2) Where the first twenty percent line at the base of the hills is discontinuous, the Toe of the hill shall be drawn along the boundary of the twenty percent slope area to create a continuous line. ~~major drainage courses, canyons, swales or gullies have a floor exceeding one hundred fifty feet in width and the sides are dominant features of the landscape, the swales cannot be "jumped over" but must be treated as an integral part of the hill face area. In this case, the toe of the hill line shall follow these major landscape features, following the twenty percent slope.~~
- (3) Where the twenty percent line creates pockets or projections narrower than one hundred feet, the line is drawn across the pocket or projection. Drainage courses less than one hundred fifty feet in width at the floor may be crossed over and excluded from included in the hill face area.
- (4) Application to the Planning Director may be made to revise the location of the Toe of the Hill line on any property and such application will be reviewed for consistency with the Hill Area Initiative of 2002 and any implementing ordinances or regulations adopted pursuant thereto. The applicant shall be required to submit a survey prepared by a professional land surveyor or professional civil engineer showing the existing and proposed Toe of the Hill line, and such survey shall be subject to review by the City. A General Plan Amendment and Zoning atlas amendment shall be required to implement any changes to the Toe of the Hill line. Slopes of twenty-one to twenty-two percent, which are less than five hundred feet in length, may be crossed over to access other areas where the slope is less than twenty percent.
- (5) The toe of the hill line shall be drawn such that no pocket narrower than one hundred twenty five feet is created.

Exhibit A-2

City of Fremont Hill Initiative Zoning Text Amendment Public Facilities District March 12, 2004

Amend Article 8.2 as follows:

Sec. 8-2820. Purpose.

To foster the orderly development of large-scale educational and public service uses in the community and special approved uses on publicly owned land; to insure the presence of said uses as a vital part of the community balance; and to prevent intrusion of uses which may overburden community facilities and resources

Sec. 8-2821. Permitted uses.

- (a) Publicly-owned facilities; in areas designated as Hill Area in the General Plan, city and other government facilities and infrastructure, and public utility or service facilities, not exempted from local regulation by State or Federal law that are limited to meeting the needs created by uses permitted in the Hill Area unless the City Council reasonably finds more extensive public need that cannot practicably be met outside the Hill Area. The exception for more extensive public need shall not apply to waste treatment and disposal or commercial electrical power generating facilities.
- (b) Public parks and open space;
- (c) Public colleges;
- (d) Public transit agency facilities, except in areas designated as Hill Area in the General Plan.

Sec. 8-2822. Accessory structures.

Any accessory structures within the zoning district shall be clearly incidental to the primary use.

Sec. 8-2823. Conditional uses: Planning Commission as reviewing agency.

The following uses may be permitted with a conditional use permit, provided all other requirements of this chapter are met. The procedure for a conditional use permit shall be as set forth in Article 25 of this chapter.

- (a) Private or joint public and private uses, except in the civic center adjacent to Central Park.
- (b) Corporation yards.

Sec. 8-2824. Building and site standards.

- (a) Lot area. None.
- (b) Maximum coverage of site by impervious surfaces. None.
- (c) Front, rear and side yards. Yards must be at least equal to the height of the building, but in no case less than twenty feet.

- (d) Maximum building height. Outside the area designated as Hill Area on the General Plan: Forty-five feet, except that the city council may permit an increase in height for structures where the council finds, pursuant to Article 25 of this chapter, an increase will not be detrimental to the lighting, air or privacy of any other properties in the vicinity of the structure. In areas designated as Hill Area on the General Plan, the height limit is 30 feet.

Sec. 8-2825. Other required conditions.

- (a) Unless otherwise exempted from city review, all structures and site plans shall be subject to site plan and architectural approval as set forth in Article 27 of this chapter. In addition, structures and site plans for those projects located in the Hill Area of the General Plan shall be subject to the performance standards of Article 17.1, Section 8-21717 of this chapter.
- (b) In conjunction with the site plan and architectural approval process, as set forth in Article 27 of this chapter, the community development director may require the preparation of a visual assessment to analyze building proportions, massing, height and setback to preserve and enhance the character of the surrounding area.
- (c) Because of the wide range of public facilities permitted within the district, no minimum yard or landscaping requirements are established. However, any public facility shall provide landscaped yards and parking areas similar to and consistent with adjacent uses and consistent with the needs of the intended use of the public facility.

EXHIBIT A-3

City of Fremont Hill Initiative Zoning Text Amendment Hill Face Open Space

January 30, 2004

Amend Sec. 8-21711 as follows:

Sec. 8-21711. On lands designated hill face open space on the general plan land use diagram: Uses.

(a) The following are permitted uses:

- (1) Agriculture; including grazing, feed lots for livestock that primarily receive their sustenance in the Hill Area from grazing on a ranch or farm that includes the feedlot parcel; small pig farms not exceeding three brood sows and their litters; and horticulture, floraculture and arborculture, but not including commercial feed lots, large or medium-size pig farms, poultry ranches, commercial vineyards, or Christmas tree farms. Agricultural operations involving animals shall comply with applicable county, state and federal regulations relating to the raising of animals.
- (2) Small-scale extraction and processing of rock, soil, or water for agricultural uses on the parcel or parcels on which the extraction and processing takes place.. For purposes of this provision, "small scale" shall mean those operations not requiring a grading permit (for example, agricultural grading) or use permit for a quarry or permit from the Water District for commercial extraction of water;
- (3) Private, public and quasi public nature observation activities;
- (24) Public parks consistent with the General Plan Hill Area policies;
- (35) Wildlife refuges;

(b) Accessory uses:

- (1) Signs complying with the applicable regulations set forth in Article 21 of this chapter;
- (2) Rooming and boarding of not more than two persons;
- (3) ~~Home occupations, in principal dwelling unit only.~~ Packaging, processing, storage or sale of agricultural produce or plants, a substantial portion of which were grown in the Hill Area providing however, the operation of such uses shall be secondary to that of the primary agricultural use of the lot; providing further that the above uses shall not include the commercial feeding of garbage or offal to swine or other animals;

(c) Conditional uses: Planning commission as reviewing agency pursuant to Article 25 of this chapter.

- (1) Single-family dwellings; and dwelling units for persons employed on the parcel or on the ranch or farm that includes the parcel and where residential development is not restricted by constraints, as in section 8-21715.1, and subject to site plan and architectural approval by the planning commission for conformance with the performance standards, lot area requirements and other conditions set forth in this

article and any other regulations and policies related to hill area development found in the general plan and adopted development policies. For proposed dwellings and other structures within three hundred feet of the ridgeline as defined on the general plan (measured horizontally), a visual analysis shall be prepared by the city, and paid for by the applicant, to verify the proposed dwelling does not violate the ridgeline profile as viewed from public roads, trails, or other public places; ~~any location below the toe of the hill within a one mile radius of the site.~~

- (2) Outdoor recreational uses; predominately for active participants, not including amusement or theme parks, motor vehicle tracks, courses or similar recreational activities or however, any facility where the use is enclosed in a buildings is prohibited.
- (3) ~~Single family dwellings to be located within two hundred feet of the high watermark of a perennial or intermittent stream.~~
- (43) ~~Dwelling clusters on lots less than five not to exceed two acres, meeting this article's performance standards for such clustering; subject to all of the additional following conditions:~~
 - a. ~~Residential development is not restricted by constraints as specified in section 8-21715.1;~~
 - b. ~~The maximum number of dwelling units permitted is based on the total land area under consideration for development and does not exceed the density otherwise derived from the number of lots allowed as per section 8-21715;~~
 - c. ~~Those portions of the area not devoted to residential use are made subject to an open space easement, scenic easement/restriction or other legal device guaranteeing that such portions shall remain open and undeveloped.~~
- (54) Public and utility structures and uses—City and other government facilities and infrastructure, and public utility or service facilities, not exempted from local regulation by State or Federal law that are limited to meeting the needs created by uses permitted in the Hill Area unless the City Council reasonably finds more extensive public need, that cannot practicably be met outside the Hill Area; provided that this exception for more extensive public need shall not apply to waste treatment and disposal or commercial electrical power generating facilities.;
- (6) ~~Where development is restricted by constraints, as specified in section 8-21715.1, and where acceptable access, as determined by the planning commission is available to the building site, the following are conditional uses:~~
 - a. ~~Single family dwellings on lots twenty acres or greater;~~
 - b. ~~One guesthouse, not rented or otherwise conducted as a business;~~
 - c. ~~Public structures and uses and quasi public uses of a recreational nature.~~
- (7) ~~Caretaker units and caretaker mobile homes.~~
- (85) Private garages and other structures for the storage of equipment, parking areas and private stables.;
- (9) ~~One guesthouse, not rented or otherwise conducted as a business;~~
- (406) Other accessory uses and buildings customarily appurtenant to a permitted use;

- (7) Uses in historic structures incidental to preserving the structures and their historic qualities and setting which are listed on a National, State or Local list of historic resources.
- (c) Zoning Administrator Permit: The following uses may be permitted with a zoning administrator permit provided that all other pertinent requirements of this chapter are met:
 - (1) Occasional short-term events related to agriculture or animals, that do not interfere substantially with the use of land for agriculture or cause lasting adverse environmental harm or visual effects, provided access for vehicles and emergency equipment and for parking meet generally applicable City standards and subject to a Special Event Permit, if applicable;
 - (2) Home occupations in principal unit only and subordinate to residential use and conducted by residents of the property, that will have no deleterious effects on the environment or visual qualities or materially increase local traffic;
 - (3) Commercial small scale, low-intensity rearing, custodianship, training or care of animals, other than ruminants (which shall be governed as agriculture by section 8-21711(a)), providing the Zoning Administrator finds such use does not cause material environmental damage.
- ~~(d) Uses specifically prohibited:~~
~~Motorized recreational vehicle facilities.~~

[Note: motorized vehicles are already excluded in (d)(2) above.]

EXHIBIT A-4

City of Fremont Hill Initiative
Zoning Text Amendment
Open Space Zoning District –Ridgeline Open Space
January 30, 2004

Delete Sec. 8-21712. as follows:

~~Sec. 8-21712. On lands designated ridgeline on the general plan land use diagram: Uses.~~

~~(a) Permitted uses:~~

- ~~(1) Agriculture;~~
- ~~(2) Public parks;~~
- ~~(3) Wildlife refuges.~~

~~(b) Accessory uses:~~

- ~~(1) Signs complying with the applicable regulations set forth in Article 21 of this chapter;~~
- ~~(2) Rooming and boarding of not more than two persons;~~
- ~~(3) Home occupations, in principal dwelling unit only.~~

~~(c) Conditional uses: Planning commission as the reviewing agency pursuant to Article 25 of this chapter:~~

- ~~(1) Outdoor recreational uses; however, any facility where the use is enclosed in a building is prohibited;~~
- ~~(2) Public and utility structures and uses. A visual analysis shall be prepared by the city, and paid for by the applicant, to verify any proposed structures do not violate the ridgeline profile as viewed from any location below the toe of the hill within a one mile radius of the site.~~

~~(d) Uses specifically prohibited:~~

- ~~(1) Single family residences, and any accessory structures related thereto, including agricultural structures;~~
- ~~(2) Motorized recreational vehicle facilities.~~

~~(Ord. No. 2045, § 103, 9-21-93.)~~

EXHIBIT A-5

City of Fremont Hill Initiative Zoning Text Amendment Open Space Zoning District –Hill Open Space

January 30, 2004

Amend Section 8-21713 as follows:

**Sec. 8-21713. On lands designated hill open space on the general plan land use diagram:
Uses.**

- (a) Permitted uses are those listed as such in Section 8-21711 of this article.:
 - (1) ~~Agriculture;~~
 - (2) ~~Public parks;~~
 - (3) ~~Wildlife refuges;~~
- (b) Accessory uses are those uses listed as such in Section 8-21711 of this article.:
 - (1) ~~Private garages and other structures for the storage of equipment, parking areas and private stables;~~
 - (2) ~~Roadside stands complying with the applicable regulations set forth in Article 21.3 of this chapter;~~
 - (3) ~~Signs complying with the applicable regulations set forth in Article 21 of this chapter;~~
 - (4) ~~One guesthouse, not rented or otherwise conducted as a business;~~
 - (5) ~~Rooming and boarding of not more than two persons;~~
 - (6) ~~Other accessory uses and buildings customarily appurtenant to a permitted use;~~
 - (7) ~~Home occupations in principal dwelling unit only.~~
- (c) Conditional uses: Planning commission as reviewing agency are those listed as such in Section 8-21711 of this article, and the following uses , pursuant to Article 25 of this chapter:
 - (1) ~~Single family dwellings where residential development is not restricted by constraints, as in section 8-21715.1, and subject to site plan and architectural approval by the development organization for conformance with the performance standards, lot area requirements and other conditions set forth in this article. For dwellings within three hundred feet of the ridgeline as defined on the general plan, a visual analysis shall be prepared by the city, and paid for by the applicant, to verify the proposed dwelling does not violate the ridgeline profile as viewed from any location below the toe of the hill within a one mile radius of the site.~~
 - (2) ~~Outdoor recreational uses, including golf courses, driving ranges, and other similar commercial recreational facilities, but not including drive-in movie theaters, or any facility where the principal use is enclosed in a building. Incidental to such open space~~

~~recreational uses there may also be permitted restaurants and commercial uses ancillary to permitted uses.~~

- ~~(3) Kennels;~~
- ~~(4) Stables or riding academies except those permitted pursuant to Title III, Chapter 5 of this Code, the zoning administrator being the granting authority;~~
- ~~51) Cemeteries, not including crematories, mausoleums or columbariums;~~
- ~~(6) Quarters, accommodations or areas for transient labor, such as labor cabins or camps, where incidental to a principal permitted agricultural use;~~
- ~~(7) Hunting preserves;~~
- ~~(8) Public, quasi public and utility structures~~
- ~~(9) Nurseries at which sales are limited to horticultural material grown on the premises;~~
- ~~(10) Single family dwellings to be located within two hundred feet of the high watermark of a perennial or intermittent stream;~~
 - ~~Dwelling clusters on lots less than the minimum lot area required pursuant to section 8-21715, subject to all of the following conditions:~~
 - ~~a. Residential development is not restricted by constraints, as specified in section 8-21715.1;~~
 - ~~b. The maximum number of dwelling units permitted is based on the total land area under consideration for development and does not exceed the density derived from the number of lots otherwise allowed as per section 8-21715;~~
 - ~~c. Those portions of the area not devoted to residential use are made subject to an open space easement, scenic restriction or other legal device as required by the performance standards of this article, guaranteeing that such portions shall remain open and undeveloped.~~
- ~~(12) Caretaker units and caretaker mobile homes.~~
- ~~(13) Where development is restricted by constraints, as specified in section 8-21715.1, and where acceptable access, as determined by the zoning administrator, is available to the building site, the zoning administrator shall act as the reviewing agency:~~
 - ~~a. One guesthouse, not rented or otherwise conducted as a business;~~
 - ~~Public structures and uses and quasi-public uses of a recreational nature.~~
- (2) Commercial, public, or quasi-public accommodations for short-term occupancy and for provision of food and drink (including low-intensity campgrounds and picnic facilities), predominantly for persons engaged in outdoor recreation or nature observation;
- (3) Neighborhood stores and services, predominantly to serve the unmet agricultural and other needs of the population of the Hill Area, that cannot practicably be met outside the Area;
- (4) Health Services;
- (5) Institutional and other non-profit uses that primarily serve Hill Area residents, or whenever and to the same extent like commercial uses would be permitted.
 - (d) Zoning Administrator uses are those listed as such in Section 8-21711 of this article.
 - ~~(d) Uses specifically prohibited:~~
 - ~~(1) Motorized recreational vehicle facilities.~~

EXHIBIT A-6
City of Fremont Hill Initiative
Zoning Text Amendment
Open Space Zoning District –Private Open Space

January 30, 2004

Amend Sec. 8-21713.2 as follows:

**Sec. 8-21713.2. On lands designated private open space on the general plan land use diagram:
Uses.**

- (a) Permitted uses for lands located outside of the Hill Area as defined by the General Plan:
 - (1) Agriculture.
 - (2) Passive/active recreational areas for use by applicable homeowner's associations.
- (b) Accessory uses for lands located outside the Hill Area as defined by the General Plan:
 - (1) Signs complying with the applicable regulations set forth in Article 21 of this chapter.
- (c) Conditional uses for lands located outside the Hill Area as defined by the General Plan (except as precluded by open space easements or other restrictions): Planning commission as the reviewing agency, pursuant to Article 25 of this chapter:
 - (1) Outdoor recreational uses, including golf courses, driving ranges, marinas and other similar commercial recreational facilities, but not including drive-in movie theaters, or any facility where the principal use is enclosed in a building. Incidental to such open space recreational uses there may also be permitted restaurants and commercial uses ancillary to permitted uses.
 - (2) Nurseries at which sales are limited to horticultural materials grown on the premises.
 - (3) Cemeteries, crematories, mausoleums and columbariums.
- (d) Uses specifically prohibited:
 - (1) Motorized recreational vehicle facilities.
- (e) Permitted Uses for lands located within the Hill Area as defined by the General Plan:
 - (1) Agriculture uses shall be those listed as permitted uses in Section 8-21711 of this article.
 - (2) Passive/active recreational areas for use by applicable homeowner's associations.
- (f) Accessory Uses for lands located within the Hill Area as defined by the General Plan:
 - (1) Signs complying with the applicable regulations set forth in Article 21 of this chapter.
- (g) Conditional Uses for lands located within the Hill Area as defined by the General Plan:
 - (1) Outdoor recreational uses; predominately for active participants, not including amusement or theme parks, motor vehicle tracks, courses or similar recreational activities or any facility where the use is enclosed in a building.
 - (2) Nurseries at which sales are limited to horticultural materials grown on the premises.
 - (3) Cemeteries, not including crematories, mausoleums or columbariums.

EXHIBIT A-7

City of Fremont Hill Initiative Zoning Text Amendment Open Space Zoning District –Institutional Open Space March 22, 2004

Amend Sec. 8-21713.3 as follows:

Sec. 8-21713.3 On lands designated institutional open space in the general plan: Uses.

(a) Principal permitted uses for lands outside the Hill Area as defined by the General Plan:

- (1) Agriculture;
- (2) Public parks;
- (3) Wildlife refuges.

Principal permitted uses for property located in the Hill Area as defined by the General Plan are those listed as permitted in Section 8-21711 (a) of this article.

(b) Accessory uses for lands outside the Hill Area as defined by the General Plan:

- (1) Signs complying with the applicable regulations set forth in Article 21 of this chapter;
- (2) Uses and buildings customarily appurtenant to a permitted use.

Conditional uses for lands outside of the Hill Area as defined in the General Plan: ~~Planning commission as the reviewing agency, pursuant to Article 25 of this chapter:~~

- (1) Public and quasi-public buildings and uses of an administrative, recreational, educational, religious, cultural or public service type related to the open space use; not including corporation yards, storage or repair yards and warehouses.
- (2) Helicopter landing pads.
- (3) Outdoor recreational uses, including golf courses, driving ranges, marinas and other similar commercial recreational facilities, but not including drive-in movie theaters, or any facility where the principal use is enclosed in a building. Incidental to such open space recreational uses there may also be permitted restaurants and commercial uses ancillary to permitted uses.

Kennels;

- ~~(5) Stables or riding academies except those pursuant to Title III, Chapter 5 of this Code, the zoning administrator being the granting authority;~~
- (56) Nurseries at which sales are limited to horticultural material grown on the premises.

Conditional uses for property located in the Hill Area as defined by the General Plan are outdoor recreational uses predominately for active participants, not including amusement or theme parks, motor vehicle tracks, courses or similar recreational activities or any facility where the use is enclosed in a building.

Zoning Administrator Permit uses for property located in the Hill Area as defined by the General Plan are those listed as Zoning Administrator Permits in Section 8-21711(c) of this Article, except home occupations and stables or riding academies pursuant to Title III, Chapter 5 of this Code.⁷

EXHIBIT A-8

City of Fremont Hill Initiative Zoning Text Amendment Open Space Zoning District –Yard Requirements January 30, 2004

Sec. 8-21715. Area, lot width and yard requirements.

The following minimum requirements shall be observed, except where modified by conditional use permit approval, zoning administrator permit approval or where a smaller lot area is permitted pursuant to section 8-21715.2:

(a) Lot area:

(1) Land under agricultural preserve contract:

a. Ten acres: When designated as prime agricultural land by the State of California Office of Land Conservation, except when located in the Hill Area, in which case, the minimum is 20 acres for new parcels;

Forty acres: When designated as nonprime agricultural land by the State of California Office of Land Conservation;

One hundred acres: For property within the Hill Area of the General Plan designated as prime or nonprime agricultural land by the State of California Office of Land Conservation and annexed to the City of Fremont after January 1, 2002.

(2) Land not under agricultural preserve contract:

- a. ~~Five~~ Twenty acres: In those areas ~~above the toe of the hill where development is not restricted by constraints, as specified in section 8-21715.1, and when~~ designated as hill open space or hill face open space on the general plan. Lot area may be approved at less than this minimum lot size when parcels are clustered through the conditional use permit process to reduce visibility and environmental harm pursuant to the Performance Standards of this article. Clustering of development may be on a single parcel or on separate, adjacent parcels that do not exceed two acres.
- b. One acre: In those areas below the toe of the hill, when designated as open space on the general plan, and where development is not restricted by constraints, as specified in section 8-21715.1.
- c. Four acres: In those areas below the toe of the hill, when designated as open space on the general plan, and where development is restricted by constraints, as specified in section 8-21715.1. A higher density to a maximum of one unit per acre may be allowed if the City Council finds site constraints, as specified in section 8-21715.1, will be mitigated.

~~Ten acres: In those areas where development is not restricted by constraints, as specified in section 8-21715.1, and when designated as hill face open space or ridgeline on the general plan. The lot size may be reduced to five acres when development and access have been determined by the planning commission, pursuant to the requirements set forth in Article 25 of this chapter, to have been designed and located so as to avoid substantial environmental degradation and eliminate or substantially eliminate the~~

~~visibility of the development and access from any location below the toe of the hill within a radius of one mile of the site.~~

~~Twenty acres :in those areas above the toe of the hill where residential development is not restricted by constraints, as specified in section 8-21715.1.~~

- d. One hundred acres: For lands designated as Hill Area in the General Plan and annexed to the City of Fremont after January 1, 2002
 - f.e. Constrained and unconstrained land, as specified in section 8-21715.1, may be combined within a single ownership in order to comply with the lot area requirements herein, provided that there is at least one contiguous and accessible ~~area~~ acre of unconstrained land per residential dwelling unit.
 - g. ~~Under five acres: In those areas above the toe of the hill where residential development is not restricted by constraints, as specified in section 8-21715.1 and the planning commission grants approval of a conditional use permit for a dwelling cluster, public, quasi-public or utility structure or use.~~
- (b) Lot width:
 - (1) Lots ten acres and larger: Three hundred feet.
 - (2) Lots less than ten acres and larger than four acres: Two hundred and twenty-five feet.
 - (3) Lots four acres or less: The same as the zoning district most nearly equivalent in lot size, or as specified by a conditional use permit.
 - (c) Front yard:
 - (1) Lots ten acres and larger: Fifty feet.
 - (2) Lots less than ten acres and larger than four acres: Forty-five feet.
 - (3) Lots four acres or less: The same as the zoning district most nearly equivalent in lot size, or as specified by a conditional use permit.
 - (d) Side yards:
 - (1) Lots ten acres and larger: Each side fifty feet.
 - (2) Lots less than ten acres and larger than four acres: Each side thirty-five feet.
 - (3) Lots four acres or less: The same as the zoning district most nearly equivalent in lot size, or as specified by a conditional use permit.
 - (e) Rear yard:
 - (1) Lots four acres and larger: Fifty feet.
 - (2) Lots four acres or less: The same as the zoning district most nearly equivalent in lot size, or as specified by a conditional use permit.

Setbacks on private streets shall be measured from the right-of-way line of the street and not from the curblane.

EXHIBIT A -9

City of Fremont Hill Initiative Zoning Text Amendment Open Space Zoning District –Land Constraints March 22, 2004

Amend Sec. 8-21715.1 as follows:

Sec. 8-21715.1. Land constraints.

Within the O-S district there may be lands on which development capability is limited because of conditions detrimental to the public health, safety and welfare. Any of the following shall be considered as constraints for development:

Areas identified by the general plan, ~~or any element thereof~~, or by an on-site geotechnical report as having any of the following characteristics:

Severe soil instability.

Class VIII soils as classified by the Soil Conservation Service of the United States Department of Agriculture.

Groundwater conditions that may affect or be affected adversely by such construction.

- (b) Lands which the city engineer or building official reasonably finds, based on the evidence before him or her, are a landslide, in the path of a landslide, at risk of a landslide, or in an area of slope instability. The evidence to be considered by the city engineer or building official may include any or all of the following:

Fremont General Plan;
An on-site geotechnical report;
A survey by the United States Geological Survey;
A survey by the California Geologic Survey;
A report available to the City; or
Observation of physical conditions.

However, in those cases where, based on a detailed site specific geotechnical report, the city engineer, or building official, finds in his or her reasonable judgment, that the constraint is capable of reasonable mitigation so that the proposed development of the area can occur consistent with this Article 17.1, then, for the purposes of the proposed development, the area shall not be considered as constrained land; provided, however, that any correction of constrained areas shall not result in lands within the hill face open space being redesignated as unconstrained land. Such site specific geotechnical report shall be prepared by a California licensed professional and the scope of such report determined by the city engineer or building official based on the type of development or construction proposed and the constraints to the land. The city engineer or building official may require that the report be peer reviewed and found acceptable by an independent geologist selected by the city engineer or building official with the costs borne by the applicant.

- (c) Lands having slopes in excess of thirty percent; provided, however, that minor encroachment onto slopes in excess of thirty percent may be permitted for lands not located within the Hill Area as delineated on the General Plan, where the director of planning finds and determines that the proposed encroachment will not conflict with the purposes and intent of this article.

EXHIBIT A-10

City of Fremont Hill Initiative Zoning Text Amendment Open Space Zoning District –Non-conforming lots January 30, 2004

Amend Sec. 8-21715.2 as follows:

Sec. 8-21715.2. Nonconforming lots.

Where a lot existed as of ~~March 1, 1981~~, January 1, 2002, and is not restricted by constraints as specified in section 8-21715.1 or as shown by detailed geological and soils studies, and where the area of such lot on said date was not less than four thousand (4000) square feet, the planning commission may approve a conditional use permit authorizing the use of the lot for one single-family dwelling, if the planning commission finds that such use is consistent with the Hill Area Initiative of 2002 and the performance standards set forth in this article, and that the construction of such dwelling at the location proposed would not be hazardous to the safety of the occupants thereof.

EXHIBIT A-11

City of Fremont Hill Initiative Zoning Text Amendment Open Space Zoning District –Performance Standards

~~March 22, 2004~~

Amend Sec. 8-21717. as follows:

Sec. 8-21717. Performance standards.

No dwelling, or other structure, shall be constructed until plans for such development have been approved by the site plan and architectural approval agency (development organization), or in the case of a use subject to a conditional use permit, by the planning commission, and such body shall have made a finding that such development will be consistent with the following standards:

- (1) The impervious coverage shall not exceed fifteen percent of the area of each lot or lots except where increased or otherwise amended pursuant to a conditional use permit. "Impervious coverage" shall mean the areas of the lot or lots covered by buildings, structures, paving and other nonpermeable surfacing.
- (2) Natural vegetation shall be retained and protected to the maximum extent feasible.
- (3) Permanent vegetation and improvements capable of carrying storm water runoff in a safe manner shall be installed to the extent possible before the vegetative cover is removed from the area. Permanent vegetation shall be retained to the maximum extent feasible. Retention and protection of natural vegetation shall be indicated in a landscape plan submitted to the site plan and architectural approval agency (development organization).
- (4) Sediment basins (including debris basins, desilting basins and silt traps) shall be installed and maintained to remove sediment from runoff waters from land undergoing development.
- (5) Structures shall be designed and sited so the natural silhouette of the ridgeline, as defined in the general plan, is not disrupted.

For dwellings, structures, new lots and other development located in the Hill Area of the General Plan, the following additional standards shall be met:

- (6) The maximum aggregate floor area for all floors (regardless of composition) in buildings on a parcel may not exceed one percent (1%) of the parcel's area, or 20,000 square feet, whichever is less, but for any parcel two acres or greater in area, a minimum of 10,000 square feet shall be permitted. The total aggregate floor area for legal nonconforming lots or lots approved for clustering and less than two acres, shall be determined as part of use permit process required by this Article. Government facilities are not subject to the aggregate limit to the extent that the City Council reasonably finds that they are necessary to serve important public needs, that they cannot practicably be located outside the Hill Area, and that they must exceed the floor area maximum. The City Council may also authorize a larger area if needed for housing for agricultural workers, or for processing, packaging or storage of agricultural produce or plants, a substantial portion of which were grown in the Hill Area, or for other agricultural purpose. If feasible, clustering shall be required for residential and other permitted development on contiguous parcels in common ownership subject to subsection (11) of this section.
- (7) All buildings on a parcel shall be placed within a contiguous "development envelope" not to exceed two acres, except for buildings that must be located outside the envelope for

agricultural uses or security needs, or for government or public utility facilities that the City Council reasonably finds require a more extensive area.

- (8) Structures may not be located on ridgelines or hilltops, or where they will project into the visual plane of a ridgeline or hilltop, as viewed from public roads, trails, or other public places, unless there is no other building site on the parcel or on a contiguous parcel in common ownership pursuant to the Hill Area Initiative of 2002. Evidence to evaluate this visual impact shall be provided pursuant to Sec.8-21718(c) of this article.
- (9) Unless there is no other possible configuration, new parcels may not be created that have no building site other than a ridgeline or hilltop, or that would cause a building to project into the visual plane of a ridgeline or hilltop, as viewed from a public place.
- (10) To reduce visual impact of development:
 - (i) New or reconfigured parcels, including those resulting from lot line adjustments, must be created or drawn to minimize visibility of development from public places;
 - (ii) To the extent practicable, structures shall be located, including by setbacks from parcel boundaries, on that part of a parcel or on contiguous parcels in common ownership that minimizes visibility from public places, except agricultural structures necessary for agricultural purposes may be located in more visible areas;
 - (iii) In all cases, appropriate landscaping, preservation of vegetation, screening, and building materials shall be required by the City to minimize the visual impact of development. Consistent with that end, alteration of topography by grading, excavating, filling or other development activity shall be minimized. Development shall be subordinate to and blend with the natural and open space qualities of the area where located, so as to be as unobtrusive as possible, and not to impair those qualities.
- (11) Clustering, which also may be described as transfer of density or development rights, may be allowed for permitted development on any parcels through the conditional use permit process, if the effect is to reduce overall visibility from public places or, consistent with that, to reduce environmental harm. Required or permitted clustering may be on a single parcel or on separate, adjacent parcels that do not exceed two acres.
- (12) Development or conversion to agriculture or more intensive agriculture is not permitted on or adjacent to wetlands if the quantity or biological quality of the wetlands will be reduced measurably. "Wetlands" are areas permanently or periodically covered by water, where hydrophytic vegetation is present under normal conditions, or that have soils primarily hydric in nature.
- (13) No development shall be located within a riparian corridor, except for otherwise permitted flood control, erosion control, water supply, transportation facilities, fences or hiking or equestrian trails. "Riparian corridors" are the areas within 200 feet from the center of a permanent or intermittent stream bed.
- (14) No development or conversion to agriculture or more intensive agriculture materially impairing Critical Habitat, designated by the United States Fish and Wildlife Service for preservation of endangered or threatened plant and animal species, may be permitted.
- (15) No building site, in whole or in part, may be located on a slope of thirty percent (30%) or more. No building may be located on a site that has access over a slope of thirty percent (30%) or more. No greenhouses, in whole or in part, may be located on a slope of fifteen

percent (15%) or more. Cultivated agriculture may not be conducted on a slope of thirty percent (30%) or more.

- (16) An easement, conveyed to the City or the City's appropriate designee, shall be required for each parcel with respect to which development is permitted, including parcels from which development is transferred in cases of clustering. The easement shall bar any further development that would not be permitted under this ordinance. The easement shall be negative only; it shall convey no possessory interest to the City or its designee, nor confer any right of public access. The parcel remains wholly in private ownership, so far as the easement is concerned, with exclusive occupancy and use in the owner. The City has no responsibility or liability because of the easement for acts or omissions on the parcel, except in good faith and effectually to remedy or prevent violations of the easement. The easement shall terminate when the parcel is restored substantially to its pre-development condition, so far as the effects of development are concerned.
- (17) Apart from the regular subdivision process, the City may not permit lot line adjustments, except as required by State law, if the adjusted parcels for any reason would not comply with the General Plan, including minimum parcel sizes, and all city zoning and building ordinances, or adjustments between more than four (4) parcels, or part of a plan or series of adjustments between more than four (4) parcels.
- (18) The City shall not grant certificates of compliance or conditional certificates of compliance except develop, nor diminishes in any respect the City's authority to control development.

For purposes of applying the above standards to the Hill Area, unless the text or context clearly indicates otherwise:

"Development" includes the placement or construction of any building or structure, including mobile dwelling units, and grading, excavation or fill of land.

"Building" is any structure having a roof supported by walls or columns, or both, except for greenhouses, and intended for the shelter, housing or enclosure of any person, animal or property.

"Structure" includes but is not limited to any building, greenhouse, tower, antenna, utility line, retaining wall, dam, pumping facility, water tank or anything constructed or erected, the use of which requires location on the ground or attachment to something located on the ground and requiring a building permit.

Exhibit 12-a

City of Fremont Hill Initiative Zoning Text Amendment January 30, 2004

Sec. 8-21810. Purpose.

To encourage and provide a means for effectuating desirable development, redevelopment, rehabilitation and conservation in the city, which features variations in siting, mixed land uses and/or varied dwelling types. The amenities and compatibility of P districts is to be insured through adoption of a precise site plan, showing proper orientation, desirable design character and compatible land uses. All planned district amendments within the Hill Area of the General Plan, including amendments to those planned districts in existence prior to the enactment of the Hill Initiative of 2002, shall comply with the regulations set forth in this article.

Sec. 8-21811. Standards and requirements for P districts.

The following provisions shall apply in a P district, which district shall also be subject to other provisions of this chapter. In cases where there are conflicts with regulations implementing the Hill Area Initiative of 2002, the regulations implementing the Initiative shall apply, except that In cases where conflict ~~in~~ with other chapter regulations occurs, the regulations specified in this article or on a site plan approved pursuant to this article, shall apply:

- (a) P districts may be established on parcels of land which have been determined by the planning commission and city council to be suitable for and of sufficient size to be planned and developed in a manner consistent with the purposes of this article and the objectives of this chapter.
- (b) No ordinance establishing a P district shall be adopted unless and until there is on file with the city written consent of every property owner within such district at the time of adoption of the ordinance agreeing:
 - (1) That the applicant and/or property owner shall be bound by the conditions and regulations proposed and which will be effective within the district; and
 - (2) To record such written agreement with the county recorder.
- (c) Before detailed studies of any P district development plans shall be undertaken by the planning staff or planning commission, there shall be on file with the city the tentative written consent of all property owners within the proposed district that such detailed studies be made.
- (d) Standards for area, coverage, density, yard requirements, parking and screening for P district uses shall be governed by the standards of the residential, commercial or industrial zoning district(s) most similar in nature and function to the proposed P district use(s), as determined by applicable ordinances and laws of the city. In establishing a P district, Exceptions to these standards by the planning commission and the city council are possible when these bodies find that such exceptions encourage a desirable living environment and are warranted in terms of the total proposed development or unit thereof.
- ~~(e) Standards for increases in residential density above the step 1 density range but not to exceed the step 2 density range shall be based upon the provision of any combination of~~

~~the following amenities which the planning commission and city council determine are in excess of those required of a standard development. A measure of the sufficiency of amenities to be provided for density increases above step 1 of a range shall be based upon the amenity fee schedule set forth in the city's Master Fee Resolution. The total amenity value for planned districts shall equal the number of units above a particular step range times the appropriate value set forth in the Master Fee Resolution. Said amenity fee requirement shall not apply to projects which are exclusively developed to house senior citizens, or for increases in density for inclusion of units affordable to low or very low income households.~~

~~The required amenities fee shall be equally divided between on-site and off-site improvements. Off-site amenities shall be paid either in cash or in improvements of equivalent value as determined by the City. The following are examples of amenities which may meet the amenity requirement:~~

- ~~(1) Extraordinary public spaces, either passive or active, for use by residents of the proposed development and the public at large.~~
- ~~(8) For lands within the Hill Area, as defined by city council resolution no. 1180, residential density above step 1 of a range may be established by planned districts which meet the criteria for advancement above step 1 as detailed above, and which provide for the reservation of unimproved open space up to forty percent of the gross site area in direct proportion to the increase in lot yield from step 1 to step 2, such that forty percent open space is required at step 2 or above, and in accordance with the following rules:~~
 - ~~a. The shape, topography and location of unimproved open space shall be found to be suitable by the planning commission and city council.~~
 - ~~b. At least sixty percent of such unimproved open space shall be terrain which is returned to a natural state of vegetation.~~
 - ~~c. Land shall be reserved by dedication or grant of fee title or open space easements with the form of ownership and manner of maintenance to be determined by the city council. If land reserved is not intended to be used by the general public and its use is not limited to residents, then such lands shall be dedicated to a public agency.~~
- ~~(3) For lands within the Hill Area, as defined by city council resolution no. 1180, residential density above step 2 of a range may be established by planned districts which meet the criteria for advancement above step 1 as detailed above, and which provide for the preservation of the natural profile of the hill mass visible from the flatlands by clustering housing behind visible ridgelines.~~
- ~~(he) P district zoning may be initiated by the city council, planning commission or community development director notwithstanding the requirements of subsection (b) above and section 8-21813, provided the area to be zoned meets the purpose of a planned district as set forth in section 8-21810 above, and the standards and requirements of subsection (a) above. Written notification to property owner(s) of city intent to rezone property to P district shall be required prior to planning commission hearing on the rezoning action. P district zoning initiated by the city shall not require the city to provide preliminary or precise site plans at the time of rezoning action.~~

Any development proposed in an area zoned P pursuant to this subsection shall be initiated by the owner(s) of the property, and shall be subject to all requirements set forth in this article.

The following interim permitted uses shall be allowed prior to adoption of a precise site plan for P districts initiated pursuant to this subsection:

- (1) Agriculture, but excluding dairying and animal and poultry husbandry where the P district is designated on the general plan for future residential or commercial uses, and excluding the packing, processing or treating of agricultural products on the premises; Interim agricultural uses for property located in the Hill Area of the General Plan shall be limited to those agricultural uses permitted in the Hill Face Open Space, Hill Open Space, Institutional Open Space or Private Open Space areas depending on which designation applies.
 - (2) Existing dwellings ~~One single family dwelling~~ where the P district is designated for future residential uses on the general plan;
 - (3) Private garages and other structures appurtenant to a principal agricultural use as defined in paragraph (1) above;
 - (4) Roadside stands complying with the conditions set forth in Article 21.3 of this chapter;
 - (5) Signs complying with the applicable regulations set forth in Article 21 of this chapter.
- (i) Findings required for city-initiated P districts. When a P district is initiated pursuant to subsection (h) above, the planning commission, after a public hearing, may recommend the establishment of such P district to the City Council. The city council, after public hearing, may by ordinance establish a P district, provided the city council finds the facts presented at the hearings establish that:
- (1) The property is designated in the general plan as having a relatively unique feature, and because of the need for specific design to achieve the objectives of such special general plan designation, the property can best be developed as a P district; or
 - (2) The uniqueness of the size, shape, topography of the property or its relationship to adjacent parcels, historical character or landscaping features is such that the property can best be developed as a P district.
- (j) Density transfer of residential dwelling units between planned districts may be allowed, subject to the following criteria:
- (1) Planned districts obtaining units by means of a density transfer from another planned district shall be subject to all of the requirements set forth in this article and other applicable zoning regulations and policies of the city. Analysis of the project shall be based on the total number of proposed units, including those obtained through density transfer.
 - (2) The specific number of units designated for use as density transfer units shall be established at the time of approval of the originating planned district.
 - (3) The requirement and valuation of the density transfer units shall be established at the time of approval of the planned district originating the density transfer units. The application of the value required for the density transfer units may be determined by the city council at the time of the approval of the originating planned district or at the time of use of the transferred units.

- (4) At the time of the approval of the planned district originating density transfer units, the city council may establish a definitive time frame during which the density transfer units may be used.
- (5) Additional units may be obtained through density transfer provided that the total number of units for the development does not exceed the total of dwelling units allowed for both the property being developed and the property from which the density is being transferred. ~~top step of the density range as stated in the general plan and other policies of the city.~~
- (6) No overburdening of public utilities or services shall result from the proposed development.
- (7) Density transfer may be permitted provided the development receiving density transfer units has not been completed and/or sale(s) of individual units have not been consummated.
- (k) Secondary dwelling units, subject to the provisions set forth in Article 21.3 of this chapter, may be permitted within any existing or proposed P district.
- (l) For residential developments, those portions of the P district not devoted to residential use and intended to be designed as public open space shall be dedicated to the city or other appropriate public agency or subject to an open space easement, scenic restriction or other legal device guaranteeing that such portions shall remain open space and undeveloped.
- (m) Mixed use development. Mixed use developments may consist of separate commercial and residential buildings on the same parcel of land or compatible and residential uses within the same structure.

**Exhibit 12-b
City of Fremont Hill Initiative
Zoning Text Amendment
March 22, 2004**

Amend Section 8-21814. as follows:

Sec. 8-21814. Planning commission and city council action.

- (a) If, from the facts presented, the planning commission or the city council is unable to make the necessary findings, the application shall be denied.
- (b) In taking action, the planning commission may deny the precise site plan and schedule as submitted, or may recommend approval of said plans and schedule subject to specified amendments.
- (c) Major ~~changes~~ amendments in a precise site plan, as defined in section 8-21815(b), shall be considered the same as a change in the zoning map, and shall be made in accordance with the provisions of this chapter, provided that the signature and consent of all property owners within the district shall not be required for such changes.
- ~~(d) Minor changes to an approved precise site plan may be approved by the director of planning, provided the change is in accord with the intent expressed in the precise site plan.~~
- ~~(e)~~ If no development has occurred to effectuate a P district development within four years after the district is created, the planning commission shall review the action and determine whether or not the continuation of a given P district is in the public interest.
- ~~(f)~~ At the time of adopting any ordinance establishing a P district, the city council shall make appropriate arrangements with the applicant, which will insure the accomplishment, at the scheduled times, of the public improvements and grants of easement shown on the approved precise site plan.

Exhibit A-12(c)
City of Fremont Hill Initiative
Zoning Text Amendment
June 16, 2004

Amend Section 8-21815 as follows:

Sec. 8-21815. Minor Amendments to certain special conditions and New Development within certain P districts.

- (a) The procedures established in this section shall be applicable only to minor changes to precise site plans and new construction within approved residential developments in P initiated by owners of residential lots or their agents, not including minor changes initiated by developers or subdividers of in such districts. Such changes initiated by subdividers or developers shall be governed by section 8-21814(d). The requirements for minor amendments vary based upon the location either within or outside of the Hill Area. The requirements of Section 8-21815 shall prevail and shall supercede any contrary provisions within individual Planned Districts.
- (b) Minor changes to approved developments in the Hill Area (Above the Toe of the Hill). Where a residential lot in a P district located above the Toe of the Hill has been developed in accordance with a precise site plan and the owner wishes to make additions, modifications that would not cause the primary building to exceed 7,500 square feet in area or add an accessory structures that does not exceed 600 square feet in area, above the Toe of the hill which imposes special conditions as to fences and hedges, yard requirements, building additions or accessory structures which are more restrictive than would be required in the conventional residential district whose minimum lot area is closest to the area of such residential lot, the owner or his agent of the owner may apply for an amendment to the precise to such plan through the director of planning Development Organization. Such amendment shall be deemed to be a minor change to such plan. The Development Organization may grant approval if it can make the findings listed in section 8-21815(g). The Development Organization may refer the matter to the Planning Commission for review when deemed necessary in the public interest. The commission shall then have the authority to consider the such amendments. In addition, the commission shall review any residence (inclusive of attached garage) that proposes to exceed 7,500 square feet in area and any accessory structure that exceeds 600 square feet in area.
- (c) New development in the Hill Area (Above the Toe of the Hill). The Planning Commission shall review all new non-accessory buildings (regardless of size) and all new accessory buildings that exceed 600 square feet in area. In addition, the Planning Commission shall consider any development referred to it by the Development Organization. The commission may grant approval if it can make the findings listed in section 8-21815(g). Applications for amendments shall be accompanied by plans sufficient to describe the nature of the proposed amendment and such other pertinent information as may be necessary for a determination as to whether the public convenience, necessity and general welfare require the adoption of the proposed amendment. The applicant shall at the time of filing the application provide a list of all owners of real property within the P district, together with a stamped and addressed envelope for each property owner.
- (d) Developments outside the Hill Area (Below the Toe of the Hill). Where a lot in a P district has been developed in accordance with a precise site plan and is located below the Toe of the Hill, the owner, or owner's agent may apply for an amendment pursuant to the regulations of Article 27 (Site Plan and Architectural Approval). All such amendments shall be reviewed by the Development Organization unless the size of the home (inclusive

attached garage area) exceeds 7,500 square feet or the size of an accessory structure exceeds 600 square feet. In these instances, and in instances where the Development Organization refers an amendment, the Planning Commission shall have authority to consider the amendment.

- (ee) Applications for amendments referred to in this section shall be accompanied by plans sufficient to describe the nature of the proposed amendment and such other pertinent information as may be necessary to review the proposed amendment. Applications for amendments for planned districts within the Hill Area of the General Plan shall describe how the proposed amendment complies with the General Plan policies and the Open Space District regulations and standards applicable to that property. The applicant shall at the time of filing of the application provide a list of all owners of real property within the P district, together with a stamped and addressed envelope for each such property owner.
- (df) When the a P district amendment affects consists of two or more lots the Planning Commission shall consider the matter at a noticed public hearing. and, The notice of the time and place of the hearing on the application shall be given by mail or delivery to all persons, businesses, corporations and other public or private entities owning real property within the P district, at least ten days prior to said hearing.
- (g) The decision making body may grant approval only if able to find that the amendment:
 - i) conforms to the standards and requirements for P districts in section 8-21811; and
 - ii) conforms to the findings required within section 8-21813; and
 - iii) is in keeping with the original intent of the Planned District approval; and
 - iv) when located above the Toe of the Hill conforms with the standards and requirements of the Open Space zoning district which corresponds to the parcel's underlying General Plan Open Space land use designation.
- ~~(e) The commission shall hold at least one hearing on the application, and shall approve the proposed amendment only if it finds that the public necessity, convenience and general welfare require such approval.~~

EXHIBIT A-13

**City of Fremont Hill Initiative
Zoning Text Amendment
(R) Development Reserve District
June 11, 2004**

Delete Article 18.7 as follows:

~~ARTICLE 18.7. (R) DEVELOPMENT RESERVE OVERLAY DISTRICTS
TABLE INSET:~~

~~§ 8-21870. Purpose.~~

~~§ 8-21871. Establishment and designation.~~

~~§ 8-21872. Lot area.~~

~~§ 8-21873. Criteria used to establish district boundaries.~~

~~§ 8-21874. Method for removal of land from (R) district restrictions, except for lands within the northern plain planning area.~~

~~§ 8-21875. Method of removal of land from (R) district restrictions for lands within the northern plain planning area.~~

~~Sec. 8-21870. Purpose.~~

~~The purpose of the (R) overlay district is to promote and encourage the orderly development of the hill areas and certain other lands of the city by the application of regulations and requirements established to meet the particular problems associated with development of these areas.~~

~~(Ord. No. 1278, § 2, 10-3-78; Ord. No. 1512, § 3, 8-3-82.)~~

~~Sec. 8-21871. Establishment and designation.~~

~~(a) (R) districts may be established only in conjunction with other districts, except P districts. An (R) designation shall be combined with whatever other district designation is applicable in the area in which an (R) district is established.~~

~~(b) The provisions of this article shall apply in an (R) district, which district shall also be subject to other provisions of this chapter, including the provisions applicable to the particular district to which the (R) district designation is added and combined, provided, that where conflict between regulations occurs, the regulations specified in this article shall prevail.~~

~~(c) Whenever an (R) district is established, any subsequent application to change the district with which the (R) district is combined shall not be construed to be an application to eliminate the (R) district for the area covered by the application, unless such intent to eliminate the (R) district is expressly stated to be part of the application.~~

~~-(Ord. No. 1278, § 2, 10-3-78; Ord. No. 1512, § 3, 8-3-82.)~~

~~Sec. 8-21872. Lot area.~~

~~The minimum lot area shall be twenty acres except for lots of lesser size legally established prior to inclusion in an (R) district, which lots shall not be subdivided while subject to restrictions of the (R) overlay district.~~

~~(Ord. No. 1278, § 2, 10-3-78; Ord. No. 1512, § 3, 8-3-82.)~~

~~Sec. 8-21873. Criteria used to establish district boundaries.~~

~~The criteria for establishing the boundaries of an (R) district shall correspond with the service areas and availability of facilities for the following:~~

- ~~(a) — Water service levels as established by the Alameda County Water District.~~
- ~~(b) — Public sewer facilities.~~
- ~~(c) — Within acceptable service response time areas for fire and police.~~
- ~~(d) — Accessibility and circulation provided by adequately acceptable public or private streets and highways.~~

~~(Ord. No. 1278, § 2, 10-3-78; Ord. No. 1512, § 3, 8-3-82.)~~

~~Sec. 8-21874. Method for removal of land from (R) district restrictions, except for lands within the northern plain planning area.~~

~~The removal of the district restrictions, except for lands within the northern plain planning area, as set forth in section 8-21872 shall be allowed when it has been determined by the planning commission that:~~

- ~~(a) — There is adequate gravity-served water service established by the Alameda County Water District;~~
- ~~(b) — There are adequate gravity-served public sewer facilities to serve the area to be developed;~~
- ~~(c) — The development is within an acceptable service response time for fire and police service; and~~
- ~~(d) — Accessibility and circulation shall be adequately provided by public and private streets or highways meeting city-adopted standards.~~

~~A parcel of land may be removed from the restriction of the (R) overlay district if the number of potential dwelling units to be developed, combined with the existing and potential development of other properties under the restrictions of the (R) overlay district, and served by the same street access, does not exceed eighty dwelling units. The eighty dwelling unit limitation is not applicable if a second access street meeting city-adopted standards is provided or otherwise guaranteed to the satisfaction of the planning commission at the time of development.~~

~~(Ord. No. 1278, § 2, 10-3-78; Ord. No. 1512, § 3, 8-3-82; Ord. No. 1522, § 5, 10-19-81; Ord. No. 1831, § 2, 8-16-88.)~~

~~Sec. 8-21875. Method of removal of land from (R) district restrictions for lands within the northern plain planning area.~~

~~The restrictions or removal of land from (R) district, for lands within the northern plain planning area, as set forth in section 8-21872 shall not be applicable when it has been determined by the planning commission that:~~

- ~~(a) — All criteria as set forth in section 8-21874 have been met; and~~
- ~~(b) — Upon adoption by the city of a general plan amendment to allow uses other than agriculture in the northern plain planning area west of the Nimitz Freeway.~~

~~(Ord. No. 1512, § 3, 8-3-82; Ord. No. 1522, § 6, 10-19-82.)~~

EXHIBIT A-14

**City of Fremont Hill Initiative
Zoning Text Amendment
Animal Feed Yards**

January 30, 2004

Amend Sec. 8-22131. Animal feed yards, as follows:

Sec. 8-22131. Animal feed yards, commercial; animal sales yards, commercial; kennels for dogs or cats; pig farms; poultry farms.

Commercial animal feed yards, commercial animal sales yards, kennels for dogs or cats, structures or enclosures used to confine or feed poultry at a poultry farm and buildings, structures or areas confining pigs or swine shall be located no closer than two hundred feet from any property line, and shall show that odor, dust, noise or drainage shall not constitute a nuisance or a hazard to adjoining property or uses and shall be in compliance with applicable state and federal laws pertaining to keeping of confined animals.

Exhibit A-15
City of Fremont Hill Initiative
Zoning Text Amendment
Service Facilities
January 30, 2004

Amend Section 8-22160 as follows:

Sec. 8-22160. Service facilities permitted in any district.

The erection, construction, alteration or maintenance of service facilities by an operator shall be allowed in any district, subject to the following definitions, requirements, restrictions, limitations and standards:

- (a) *Definition of "service facilities".* "Service facilities", as used herein, shall mean underground or overhead electrical, gas, petroleum products, steam or water transmission systems; collection, communications supply or disposal transmission systems, including poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment and accessories in connection therewith.
- (b) *Definition of "operator".* "Operator", as used herein, shall mean any public utility, corporation or other private business entity, municipal corporation or other governmental agency.
- (c) *Location of service facilities in public streets.* Except as provided in subsection (e), the erection, construction, alteration or maintenance of service facilities by an operator in, upon, under or over public streets shall be a principal permitted use in any district. To the maximum extent feasible and allowed by law, the design of such facilities within the Hill Area as defined by the General Plan shall be consistent with the policies established for the Hill Area and Article 17.1 of this chapter.
- (d) *Location of service facilities not within public streets.* Any proposal by an operator to place any service facilities in locations which are not within public streets shall be allowed only if a conditional use permit has been obtained. The commission may grant a conditional use permit for the use of land for such service facilities pursuant to the provisions of this chapter, giving particular consideration to the effect of the location and manner of operation of the service facilities upon future development of the city's public street system and privately owned lands within the undeveloped and growing areas in which such service facilities will be located.
- (e) *Location of service facilities in the Hill Area.* Those services requiring a conditional use permit and not exempted from local regulation by State or Federal law, and located within the Hill Area of the General Plan shall be consistent with the Hill Initiative of 2002. Such facilities are limited to meeting the needs created by uses permitted in the Hill Area, unless the City Council reasonably finds more extensive public need that cannot practicably be met outside the Hill Area.

~~Electric transmission lines. Notwithstanding subsection (c), any proposal by an operator to erect, construct and place service facilities consisting of overhead wires and supporting structures of electric transmission lines rated at 50,000-volt capacity or more, designed to carry a load of at least 20,000 kilovolt amperes, shall be allowed only if a conditional use permit has been obtained. The commission may grant a conditional use permit for any such overhead transmission line pursuant to provisions of this chapter (including but not limited to subsection (d) hereof if the proposed~~

~~overhead transmission line is not to be located entirely within public streets), giving particular consideration to the effect of the location of such overhead transmission line upon the land uses of adjacent properties as indicated by the general plan, zoning map, existing land uses thereon, and other evidence relating to land use made available to the commission within the scope of the general purposes of this chapter, and in connection therewith the applicant or operator shall provide, in the application and as may be further required by the commission, such information relating to the engineering, economic and other technical factors of the proposal which is relevant to the final determination of the commission. Any such proposal of an operator may contain in the same application for a conditional use permit, alternative routes for the location of such overhead transmission line. If the commission is unable to approve or conditionally approve any such proposal for an overhead electric transmission line, including any said alternative thereof, pursuant to the provisions of this subsection, the commission shall deny the application for the conditional use permit and, upon such a decision becoming final, the operator may proceed to construct, place and maintain such transmission line underground pursuant to Chapter 3, Title VI of this Code and any other applicable laws and regulations.~~

- (f) Certain service facilities excepted. This section shall not apply to the following:
- (1) Existing service facilities located within the City of Fremont;
 - (2) Service facilities which are constructed, installed, altered or maintained in connection with any subdivision approved pursuant to Chapter 1, Title VIII of this Code;
 - (3) Service facilities providing a direct connection from distribution service facilities immediately adjacent to a single parcel or unified residential, or private commercial development, not involving a subdivision, which is to be served by such connection; provided, that in addition to such exception, a conditional use permit shall not be required pursuant to subsection (d) if a proposal involves the extension of service facilities to serve a parcel or lot not more than three hundred feet from distribution service facilities where such service facilities are to be placed entirely underground in utility easements located within intervening parcels or lots and easements do not create a subdivision and do not substantially divest the property owners subject to such easements from the right and ability to develop their property pursuant to this chapter;
 - (4) Service facilities located entirely within G-I or I-R industrial districts; and
 - (5) Service facilities for the production, generation, storage or transmission of water, which are constructed by the Alameda County Water District.
- (g) Compliance with other laws not excused. No provision of this section shall be deemed to relieve any person from compliance with other applicable provisions of law such as, but not limited to, Sections 65402 and 65552 of the Government Code, Chapter 1 (relating to encroachments within public streets and rights-of-way), and Chapter 3 (relating to undergrounding of service or utility facilities), Title VI of this Code.

EXHIBIT A-16

City of Fremont Hill Initiative Zoning Text Amendment Nonconforming uses of structures or buildings

June 11, 2004

Amend Sec. 8-22303 and 8-22305 as follows:

Sec. 8-22303. Nonconforming uses of structures or buildings.

- (a) A nonconforming use of a structure or building may be maintained indefinitely, except as otherwise provided herein.
- (b) A nonconforming use of a structure or building may be changed to a similar use or a use of lesser intensity upon approval of a conditional use permit by the planning commission. As used in this section, a use of lesser intensity shall mean a use which is found by the commission to require fewer employees or less public contact, less storage capacity or less service or demands on public facilities or energy, and is more compatible with adjacent and future planned uses.
- (c) A nonconforming use of a structure or building shall not be expanded. However, minor additions may be allowed to single-family dwellings in C-O and C-C districts. Minor additions are additions subject to the following limitations:
 - (1) The total cumulative floor area added to the principal structure and/or to detached accessory structures after May 7, 1991 shall not exceed five hundred square feet.
 - (2) The required yards and height limit for additions shall be those prescribed for the R-1-6 zoning district.
- (d) The nonconforming use of a structure or building shall not continue if the use has ceased for twelve consecutive months or for eighteen months in any consecutive period of thirty-six months. When such a cessation of use has occurred, the premises or structure shall only be used for the purposes allowed in the district in which it is located.
- (e) Where a structure or building containing a nonconforming use is damaged or destroyed by any means and replacement in kind exceeds fifty percent of the market value as determined by the county assessor on the last equalized assessment roll, it shall not resume its nonconforming use but may be restored and used in conformity with the provisions of the district in which it is located, with the following exceptions:
 - (1) A single-family dwelling in a C-O or C-C district or on lands above the Toe of the Hill that is destroyed by an act of nature or other force majeure may be reconstructed to its original size, configuration and appearance, except that in the C-O or C-C district it may incorporate an addition as provided in subsection (c) above. Additions to single-family dwellings above the Toe of the Hill may be allowed pursuant to section 8-21815. Any such rebuilding on a site in an (H) historical overlay district shall be subject to review by the historical architectural review board.
 - (2) The planning commission may grant a conditional use permit allowing the reconstruction of a structure or building damaged or destroyed as provided above, other than as set forth in subsection (1), to the same condition as when destroyed, for the continued operation of the nonconforming use, provided that all of the following findings can be made:

- (i) That the particular location is necessary for the use because of the uniqueness of the site, such as the availability of a natural resource, or preservation of a unique topographic or geologic feature;
 - (ii) That no other site is available to allow the continued operation of the use in an economically feasible manner;
 - (iii) That the use in the existing location would not have an adverse impact on adjacent land uses in terms of traffic, circulation and access, noise, light and glare, and would not adversely impact the area in terms of public facilities and services.
- (f) Whenever a nonconforming use of a structure or building has been changed to a conforming use, such conforming use shall not thereafter be changed to a nonconforming use.

Sec. 8-22304. Nonconforming structures or buildings.

- (a) A nonconforming structure or building may be maintained indefinitely in its original condition except as otherwise provided in this article.
- (b) A nonconforming structure or building may not be enlarged or altered in any manner that increases the degree of any nonconformity such as height, lot area, parking area, yard, building setback and frontage requirements. For purposes of determining the degree of parking area nonconformity, measurement shall be based on square footage and not number of spaces, so that fractional parking areas shall not be reduced in size.
- (c) Repairs of an ordinary nature may be made in any period of twelve consecutive months including repair or replacement of nonbearing walls, wiring and plumbing, the costs of which shall not exceed ten percent of the market value of the building as determined by the county assessor on the last equalized assessment roll. Work which is required to strengthen, restore or modify the structure or building as determined and ordered by the chief building official or other city or state officer by reason of statute or ordinance shall not be included within the ten percent limitation.
- (d) If a nonconforming structure or building is damaged or partially destroyed by any means and the costs of reconstruction exceed fifty percent of its market value as determined by the county assessor on the last equalized assessment roll at the time of its destruction or is damaged, it shall not be reconstructed except in conformity with the provisions of this chapter; except that the planning commission may grant a conditional use permit allowing the reconstruction of such a damaged or destroyed structure or building to the same condition as when destroyed, for the continued operation of the nonconforming use, provided that all of the following findings can be made:
 - (1) That the particular location is necessary for the use because of the uniqueness of the site, such as the availability of a natural resource, or preservation of a unique topographic or geologic feature;
 - (2) That no other site is available to allow the continued operation of the use in an economically feasible manner;
 - (3) That the use in the existing location would not have an adverse impact on adjacent land uses in terms of traffic, circulation and access, noise, light and glare, and would not adversely impact the area in terms of public facilities and services.

- (e) If a nonconforming structure or building is moved for any reason or for any distance whatever, it shall thereafter conform to the regulations of the district in which it is located.

Sec. 8-22305. Nonconforming lots.

- (a) A nonconforming lot shall not be reduced in area or width.
- (b) Any conforming use or conforming building or structure on a nonconforming lot or parcel may be enlarged, extended, reconstructed or relocated in compliance with other requirements of this chapter.
- (c) A nonconforming lot to be used for residential purposes shall be subject to the density requirements of the zoning district in which it is located; provided, that a single-family dwelling and customary accessory buildings may be erected on a nonconforming lot located in any district in which a single-family dwelling is permitted if the yards on the lot meet the minimum requirements of an R-1-6 District and provided that the lot has an area of no less than four thousand square feet.
- (d) Two or more contiguous nonconforming lots in a single ownership shall be considered to be a single lot, and no portion of any such single lot shall be divided in any manner which would diminish the degree of compliance with the area, width, or yard requirements of the district or such requirements for lands above the Toe of the Hill in which the combined lot or component lots are located.

Sec. 8-22305.1. Post-disaster repair/reconstruction of nonconforming structures.

- (a) Notwithstanding other provisions of this article, dwellings or commercial structures, as defined by this chapter, which were legal nonconforming structures when destroyed by an event, as defined in section 7-8115(a) of this Code, or were legal nonconforming when ordered demolished due to the threat posed to public health and safety as a result of damages caused by an event (per section 7-8115(a)), may be reconstructed to the same location, configuration, floor area, and height as the original structure, provided:
 - (1) They are constructed of approved materials which maintain the aesthetic characteristics and aspects of the damaged structure.
 - (2) Construction shall comply with the then current building code as adopted by the City of Fremont, Title VII of this Code.
 - (3) All parts or portions of the original construction are completely removed, except as approved by the building official.
 - (4) The site is prepared in accordance with a foundation report prepared by an individual registered by the state to perform foundation investigations whenever required by the city building code in effect at the time of reconstruction.
 - (5) The owner shall conform with the time table of Chapter 6, Title VII of this Code.
- (b) Reconstruction of partially damaged buildings shall be compatible with the architecture of the remaining portion of the building.
- (c) Reconstruction will be allowed pursuant to subsection (a) of this section only if a building permit is obtained and construction commences within two years of the date of the declaration of emergency. In the event it can be demonstrated that the failure to obtain a building permit was caused by factors outside of the control of the property owner, an extension may be granted by the building official up to a maximum of three years from the

date of the declaration of emergency. The burden of proof as to the legal nonconforming status of the structure shall be borne by the property owner.

Sec. 8-22305.6. Post-disaster nonconforming land use.

For those dwellings and commercial buildings or structures which housed legal nonconforming uses prior to an event for which there has been a declaration of emergency, the same nonconforming use may be maintained or reestablished in the new or repaired building provided the use is lawful and is in conformance with the municipal code as it relates to nonconforming uses. The burden of proof as to the legal nonconforming use of the structure shall be borne by the property owner.

EXHIBIT A-17

**City of Fremont Hill Initiative
Zoning Text Amendment
Special Uses
January 30, 2004**

Amend Sec. 8-22515 as follows:

Sec. 8-22515. Special uses; established.

The following are designated as special uses requiring a conditional use permit in all nonresidential districts not designated for residential use on the general plan. For purposes of uses in this section, open space districts are considered residential districts.:

- (a) Airports and heliports;
- (b) Sanitary landfills;
- (c) Resource recovery facilities;
- (d) Hazardous waste storage facilities, including but not limited to the storage of chemicals, pesticides, toxic materials and radioactive waste, where the primary use for the site is the temporary or permanent storage of said materials;

Any other use determined by the planning commission to be of similar character as the above uses.